



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,893	03/29/2001	Yasushi Kawakura	204411US-2 RD	5382
22850 7590 10/17/2007 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER JOHNSON, GREGORY L	
			ART UNIT 3691	PAPER NUMBER
			NOTIFICATION DATE 10/17/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No. 09/819,893	Applicant(s) KAWAKURA ET AL.	
	Examiner GREGORY JOHNSON	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is in response to the amendment filed August 2, 2007.

Status of Claims

2. Claims 1-38 are pending. Claims 1-21 are canceled. Claims 22-38 are new. Claims 22-38 have been examined.

Response to Arguments

3. Applicant's arguments with respect to claims 22-38 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 22-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackson et al., Pat. No. 6,415,270 (hereinafter Rackson), in view of Tavor et al., Pat. No. 6,070,149 (hereinafter Tavor).

As to claim 22, Rackson discloses a server computer connected through a network to a plurality of terminals, each associated with a bidder in an electrical auction (col. 8, lines 6-17 and 49-63). Rackson also discloses the following limitations:

- a merchandise (e.g. item) database configured to store a plurality of merchandise information, each including an information concerning a characteristic of a merchandise and an information concerning a price (e.g. reserve price) of the merchandise (col. 1, lines 46-52 and col. 9, lines 36-40);
- a bid information selecting section configured to select an unsuccessful bid information of an unsuccessful bidder from stored bid information (col. 12, line 63 thru col. 13, line 5; col. 14, lines 7-16; and col. 23, lines 18-29); and
- a notifying section configured to notify a terminal associated with the unsuccessful bidder of alternative merchandise.

Rackson does not discloses the following limitations:

- that the merchandise database contains alternative merchandise;

Art Unit: 3691

- an extracting section configured to extract an unsuccessful bid price and an unsuccessful bid characteristic from the selected unsuccessful bid information;
- an alternative merchandise selecting section configured to select, from the merchandise database, alternative merchandise information that satisfies a predetermined rule of comparison with the extracted unsuccessful bid price and the extracted unsuccessful bid characteristic; and
- that the notification contains selected alternative merchandise information.

However, Tavor teaches that a system can be used to sell products to users according to parameters collected from the user. Tavor teaches that if the system does not have a product matched to the customer requirements, the system will suggest alternatives, which are the closest to the customer requirements. Tavor teaches that the system ensures that all conditions are fulfilled before a product can be recommended. Tavor also teaches that the system has a products database and uses rules in determining products to recommend. (see at least Abstract; col. 7, lines 12-57; col. 9, lines 3-5 and 50-61). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as taught by Tavor within Rackson for the motivation of providing an online sales method and system that is capable of suggesting alternative products that are the closest to the customer requirements, when the online sales entity does not have a product that matches to the customer requirements (see Abstract).

As to claim 23, Rackson does not disclose the following limitations:

- the alternative merchandise selecting section is further configured to select alternative merchandise information that satisfies the predetermined rule of comparison that includes at least one of 1) an exact match between the unsuccessful bid characteristic and the characteristic of the alternative merchandise, or 2) a proximity of the unsuccessful bid price and the price of the alternative merchandise.

However, Tavor teaches that a system can select a number of alternative merchandise based on parameters and information collected from the user (see Abstract and col. 9, lines 50-61). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as taught by Tavor within Rackson for the motivation of providing an online sales method and system that is capable of suggesting alternative products that are the closest to the customer requirements, when the online sales entity does not have a product that matches to the customer requirements (see Abstract).

As to claim 24, Rackson discloses the following limitations:

- extract an unsuccessful bid characteristic from a selected unsuccessful bid information of the unsuccessful bidder in a previous auction for a previously auctioned merchandise, the unsuccessful bid characteristic including at least one of a function, a kind, a type, a specification, or a

Art Unit: 3691

condition of the previously auctioned merchandise (e.g. identical items; col. 1, lines 46-52 and col. 23, lines 18-29).

As to claim 25, Rackson does not disclose the following limitations:

- the alternative merchandise selecting section is further configured to select a predetermined number of alternative merchandise that satisfies the predetermined rule.

However, Tavor teaches that a system can select a number of alternative merchandise based on parameters and information collected from the user (see Abstract and col. 9, lines 50-61). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as taught by Tavor within Rackson for the motivation of providing an online sales method and system that is capable of suggesting alternative products that are the closest to the customer requirements, when the online sales entity does not have a product that matches to the customer requirements (see Abstract).

As to claim 26, Rackson does not disclose the following limitations:

- the plurality of alternative merchandise information includes information concerning alternative merchandise that is available for purchase.

However, Tavor teaches that a system can be used to sell products to users according to parameters collected from the user. Tavor teaches that if the system does not have a product matched to the customer requirements, the system will suggest

Art Unit: 3691

alternatives, which are the closest to the customer requirements. Tavor teaches that the system will execute various sales tools and techniques to help and assist the customer and to convince the customer to purchase a product (see Abstract). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as taught by Tavor within Rackson for the motivation of providing an online sales method and system that is capable of suggesting alternative products that are the closest to the customer requirements, when the online sales entity does not have a product that matches to the customer requirements (see Abstract).

The limitations of claims 27-38 are equivalent to the limitations of claims 22-26, and are therefore rejected on the same grounds.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

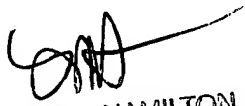
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY JOHNSON whose telephone number is (571) 272-2025. The examiner can normally be reached on Monday - Friday, 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ALEXANDER KALINOWSKI can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


LALITA M. HAMILTON
PRIMARY EXAMINER

GREGORY JOHNSON
Examiner
Art Unit 3691

